

108TH CONGRESS
2D SESSION

S. 2871

To provide for enhanced criminal penalties for crimes related to slavery
and alien smuggling.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2004

Mr. GRAHAM of South Carolina (for himself and Mr. CORNYN) introduced the
following bill; which was read twice and referred to the Committee on the
Judiciary

A BILL

To provide for enhanced criminal penalties for crimes related
to slavery and alien smuggling.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Human Trafficking
5 and Smuggling Penalty Enhancement Act of 2004”.

6 **SEC. 2. ENHANCED PENALTIES FOR SLAVERY AND ALIEN**
7 **SMUGGLING.**

8 (a) DEATH RESULTING FROM SLAVERY.—Chapter
9 77 of title 18, United States Code, is amended—

1 (1) in section 1581(a), by striking “or if” and
2 inserting “the defendant shall be fined under this
3 title, punished by death or imprisonment for any
4 term of years or for life, or both. If”;

5 (2) in section 1583, by striking “or if” and in-
6 serting “the defendant shall be fined under this title,
7 punished by death or imprisonment for any term of
8 years or for life, or both. If”;

9 (3) in section 1584, by striking “or if” and in-
10 serting “the defendant shall be fined under this title,
11 punished by death or imprisonment for any term of
12 years or for life, or both. If”;

13 (4) in section 1589, by striking “or if” and in-
14 serting “the defendant shall be fined under this title,
15 punished by death or imprisonment for any term of
16 years or for life, or both. If”;

17 (5) in section 1590, by striking “or if” and in-
18 serting “the defendant shall be fined under this title,
19 punished by death or imprisonment for any term of
20 years or for life, or both. If”; and

21 (6) in section 1591(b)—

22 (A) by redesignating paragraphs (1) and
23 (2) as paragraphs (2) and (3), respectively; and

1 (B) by inserting before paragraph (2), as
2 redesignated by subparagraph (A), the fol-
3 lowing:

4 “(1) if the offense resulted in the death of the
5 victim, a fine under this title, death or imprisonment
6 for any term of years or for life, or both;”.

7 (b) ALIEN SMUGGLING.—Section 274(a) of the Im-
8 migration and Nationality Act (8 U.S.C. 1324(a)) is
9 amended—

10 (1) in paragraph (1)—

11 (A) in subparagraph (A)—

12 (i) by amending clause (i) to read as
13 follows:

14 “(i) knowing or in reckless disregard of the fact
15 that a person is an alien, brings or attempts to bring
16 to the United States in any manner whatsoever such
17 person at a place other than a designated port of
18 entry or a place designated by the Under Secretary
19 for Border and Transportation Security, regardless
20 of—

21 “(I) whether such alien has received prior
22 official authorization to come to, enter, or re-
23 side in the United States;

1 “(II) whether the person bringing or at-
 2 tempting to bring such alien to the United
 3 States intended to violate any criminal law; or

4 “(III) any future official action which may
 5 be taken with respect to such alien;”;

6 (ii) in clause (iv), by striking “or” at
 7 the end;

8 (iii) in clause (v)—

9 (I) in subclause (I), by striking
 10 “, or” and inserting a semicolon;

11 (II) in subclause (II), by striking
 12 the comma and inserting “; or”; and

13 (III) by inserting after subclause
 14 (II) the following:

15 “(III) attempts to commit any of the preceding
 16 acts; or”; and

17 (iv) by inserting after clause (v) the
 18 following:

19 “(vi) knowing or in reckless disregard of the
 20 fact that a person is an alien, causes or attempts to
 21 cause such alien to be transported or moved across
 22 an international boundary, knowing that such trans-
 23 portation or moving is part of such alien’s effort to
 24 enter or attempt to enter the United States without
 25 prior official authorization,”; and

1 (B) in subparagraph (B)—

2 (i) in clause (i)—

3 (I) by striking “subparagraph
4 (A)(i) or (v)(I)” and inserting “clause
5 (i), (v)(I), or (vi) of subparagraph
6 (A)”; and

7 (II) by striking “10 years” and
8 inserting “20 years”;

9 (ii) in clause (ii)—

10 (I) by striking “subparagraph
11 (A) (ii), (iii), (iv), or (v)(II)” and in-
12 serting “clause (ii), (iii), (iv), or
13 (v)(II) of subparagraph (A)”; and

14 (II) by striking “5 years” and in-
15 serting “10 years”; and

16 (iii) in clause (iii)—

17 (I) by striking “subparagraph
18 (A) (i), (ii), (iii), (iv), or (v)” and in-
19 serting “subparagraph (A)”; and

20 (II) by striking “20 years” and
21 inserting “35 years”;

22 (2) in paragraph (2)—

23 (A) in the matter preceding subparagraph
24 (A)—

1 (i) by inserting “, or facilitates or at-
 2 tempts to facilitate the bringing or trans-
 3 porting,” after “attempts to bring”; and

4 (ii) by inserting “and regardless of
 5 whether the person bringing or attempting
 6 to bring such alien to the United States in-
 7 tended to violate any criminal law,” after
 8 “with respect to such alien”; and

9 (B) in subparagraph (B)—

10 (i) in clause (i), by striking the
 11 comma at the end and inserting a semi-
 12 colon;

13 (ii) in clause (ii), by striking “, or”
 14 and inserting a semicolon;

15 (iii) in clause (iii), by striking the
 16 comma at the end and inserting “; or”;

17 (iv) by inserting after clause (iii), the
 18 following:

19 “(iv) an offense committed with knowledge
 20 or reason to believe that the alien unlawfully
 21 brought to or into the United States has en-
 22 gaged in or intends to engage in terrorist activ-
 23 ity (as defined in section 212(a)(3)(B)(iv)),”;
 24 and

1 (v) in the matter following clause (iv),
 2 as added by this subparagraph, by striking
 3 “3 nor more than 10 years” and inserting
 4 “5 years and not more than 20 years”;
 5 and
 6 (3) in paragraph (3)(A), by striking “5 years”
 7 and inserting “10 years”.

8 **SEC. 3. AMENDMENT TO SENTENCING GUIDELINES RELAT-**
 9 **ING TO ALIEN SMUGGLING OFFENSES.**

10 (a) DIRECTIVE TO UNITED STATES SENTENCING
 11 COMMISSION.—Pursuant to its authority under section
 12 994(p) of title 18, United States Code, and in accordance
 13 with this section, the United States Sentencing Commis-
 14 sion shall review and, as appropriate, amend the Federal
 15 Sentencing Guidelines and related policy statements to im-
 16 plement the provisions of this Act.

17 (b) REQUIREMENTS.—In carrying out this section,
 18 the United States Sentencing Commission shall—

19 (1) ensure that the Sentencing Guidelines and
 20 Policy Statements reflect—

21 (A) the serious nature of the offenses and
 22 penalties referred to in this Act;

23 (B) the growing incidence of alien smug-
 24 gling offenses; and

1 (C) the need to deter, prevent, and punish
2 such offenses;

3 (2) consider the extent to which the Sentencing
4 Guidelines and Policy Statements adequately ad-
5 dress whether the guideline offense levels and en-
6 hancements for violations of the sections amended
7 by this Act—

8 (A) sufficiently deter and punish such of-
9 fenses; and

10 (B) adequately reflect the enhanced pen-
11 alties established under this Act;

12 (3) maintain reasonable consistency with other
13 relevant directives and sentencing guidelines;

14 (4) account for any additional aggravating or
15 mitigating circumstances that might justify excep-
16 tions to the generally applicable sentencing ranges;

17 (5) make any necessary conforming changes to
18 the Sentencing Guidelines; and

19 (6) ensure that the Sentencing Guidelines ade-
20 quately meet the purposes of sentencing under sec-
21 tion 3553(a)(2) of title 18, United States Code.

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